

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Barbara Beerhalter	Chair
Cynthia A. Kitlinski	Commissioner
Norma McKanna	Commissioner
Robert J. O'Keefe	Commissioner
Darrel L. Peterson	Commissioner

In the Matter of a Customer Complaint
Regarding an Exclusive Pay Telephone
Service and Lease Agreement with United
Telephone Company

ISSUE DATE: January 7, 1988

DOCKET NO. P-430/C-87-258

ORDER REJECTING COMPLAINT

PROCEDURAL HISTORY

On May 5, 1987, David and Loren McCarty, by their agent, Fran Ellis, filed a complaint with the Minnesota Public Utilities Commission (the Commission) requesting that their exclusive pay telephone service and lease agreement with United Telephone Company (United or the Company) be voided. The contract grants United the exclusive right to install and operate two pay telephones at the McCartys' Park Place Bowl and Lounge. The contract commenced March 30, 1986 and continues for a minimum of 36 months. Should complainants wish to terminate the agreement earlier, they are required under its terms to pay a termination fee.

Complainants asked the Commission to void the contract on grounds that the termination provision is unfair and unreasonable. They also alleged that the Company acted in bad faith in sending the contract to David McCarty and in indicating that he must sign the contract in order to receive a commission; that the termination penalty of \$840 (as of November 13, 1987) is excessive; that the contract was not fully explained by United; that the contract was not signed by a representative of the Company but instead was sent through the mail; that the proportion of the cash flow and profits kept by United is too high; and that the contract is anticompetitive.

United responded to the complaint and denied that the contract is unfair. United stated that complainants' commission of 10% of the gross receipts, local and toll, is reasonable in light of the fact that United is responsible for all costs and expenses and Park Place is held harmless from all claims, liabilities, and damages under the agreement. Further, United stated that this is a private agreement executed within a competitive environment and is fair and reasonable in terms of service, rates, tolls, and charges.

The Minnesota Department of Public Service (the Department or the DPS) issued its report of investigation and recommendation on October 22, 1987. The DPS recommended that the Commission reject the complaint and require United to place on file with the Department a copy of all contract forms used by United in its exclusive pay telephone service and lease agreements.

No party responded to the DPS report.

FINDINGS AND CONCLUSIONS

The issue before the Commission is whether the exclusive pay telephone service and lease contract between the McCartys and United should be voided.

The Commission finds that the contract was signed by both David and Loren McCarty, indicating their assent to be bound by its terms. Further, complainants did not allege nor did the DPS find that fraud occurred or that United attempted to mislead the McCartys.

Further, the Commission finds that the length of the agreement and the termination provisions are clearly defined in the one-page contract. The contract is consistent with the Company's tariff. The termination charges are standardized and appear in all 51 of United's Minnesota pay telephone contracts. Further the Commission finds that the contract contains the signature of a Company official as an indication of United's acceptance of the contract. Finally, the Commission finds that the 10% commission provided by the contract is reasonable in light of United's expenses in providing the service.

The Commission will therefore reject the complaint.

The Commission finds that the recommendation of the DPS to require United to place on file with the DPS a copy of all contract forms used for its pay telephone service is unnecessary at this time, since there is no evidence of an ongoing problem in this area. There have been very few complaints of this nature, and the Commission has been able to address them on a case by case basis.

ORDER

1. The Complaint filed on behalf of David and Loren McCarty by Mr. Fran Ellis is hereby rejected.
2. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Mary Ellen Hennen
Executive Secretary

(S E A L)